



**NOTICE OF PUBLIC HEARING**  
regarding a proposed  
**MODEL DIRECT PAYMENT PERMIT REGULATION**

The MULTISTATE TAX COMMISSION has scheduled a public hearing to obtain comments from interested parties on a proposed model regulation to authorize the use of direct payment permits in the states. The model regulation was developed jointly by state and business representatives participating in the Electronic Business Processes Work Group of the Task Force on EDI Audit and Legal Issues for Tax Administration ("EDI Task Force"). This industry-government cooperative effort has as its purpose to analyze and address the tax administration issues that arise out of electronic data interchange and other emerging business processes.

The hearing on this proposal will be held at the following location on the date and at the time specified below:

**FRIDAY, JULY 16, 1999, 2:30 P.M. (EASTERN)**

Hall of the States Building  
444 North Capitol Street, N.W., Suite 231  
Washington, D.C. 20001-1538

Public comment is sought on whether the proposed model regulation as currently drafted should be adopted by the EDI Task Force and by the Multistate Tax Commission. The text of the proposal has been provided with this notice. (The proposed model provision and this notice are available on the MTC's website at [www.mtc.gov](http://www.mtc.gov).) General comments about the proposal as well as comments regarding the specific language of the provisions are encouraged.

All public comments received during this process will be set forth in a hearing officers' report that will be submitted to the MTC Executive Committee and to the EDI Task Force work group. It is anticipated that the MTC Executive Committee will reserve its action on the report until after the EDI Task Force Work Group has reviewed and considered the public comments and hearing officers' recommendations.

*The hearing officers for this matter are René Blocker and Harley Duncan. Please submit all questions, comments and correspondence regarding this hearing matter to: Hearing Officers, Attn.: René Blocker, 444 N. Capitol Street, N.W., Suite 425, Washington, D.C. 20001-1538, Phone: (202) 624-8699, Fax: (202) 624-8819, E-mail: [rblocker@mtc.gov](mailto:rblocker@mtc.gov)*

All interested parties are invited to participate in this public hearing. Parties wishing to make formal oral presentations are requested to notify the hearing officers in writing at least two (2) working days prior to the hearing date. Written comments are acceptable and encouraged and may be provided any time prior to or on the hearing date or by such later date as may be announced for the closing of the public hearing period. Interested parties may participate via telephone by dialing (703) 736-7307 at the time indicated for the hearing. Advise the operator that you wish to participate in the "direct payment hearing" teleconference moderated by René Blocker. The confirmation number for the call is 1610385.

## MODEL DIRECT PAYMENT PERMIT REGULATION

1 A. "Direct payment permit" means a permit issued by [taxing authority] that allows a holder of such permit to  
2 accrue and pay state and local taxes under [statute] directly to the [taxing authority].

3 B. Application for Permit. Applicants for a direct payment permit must apply in writing to the [chief tax  
4 administrator]. The application shall be on a form required by the [chief tax administrator] or in a letter  
5 containing the applicant's name, address, the location of the place or places of business for which the  
6 applicant intends to make direct payment of tax, the sales and use tax account number(s) for which direct  
7 payment will be made, and any other information that the [taxing authority] may require.

8 C. Qualification Process and Requirements.

9 (1) Applicants for a direct payment permit shall demonstrate the applicant's ability to comply with the  
10 [taxing authority] sales and use tax laws and reporting and payment requirements. The applicant  
11 must provide a description of the accounting system(s) which will be used by the applicant and  
12 demonstrate that the accounting system(s) will reflect the proper amount of tax due.

13 (2) Applicants must establish a business purpose for seeking a direct payment permit and must  
14 demonstrate how direct payment will benefit tax compliance. For example, the utilization of direct  
15 payment authority should accomplish one or more of the following:

- 16 (a) Reduce the administrative work of determining taxability; collecting, verifying, calculating  
17 and/or remitting the tax;  
18 (b) Provide for improved compliance with the tax laws of the [taxing jurisdiction];  
19 (c) Provide for accurate compliance in circumstances where determination of taxability of the  
20 item is difficult or impractical at the time of purchase;  
21 (d) Provide for more accurate calculation of the tax where new or electronic business  
22 processes such as electronic data interchange, evaluated receipts settlement, or  
23 procurement cards are utilized;  
24 (e) Provide for more accurate determination and calculation of tax where significant  
25 automation and/or centralization of purchasing and/or accounting processes have occurred  
26 and applicant must comply with the laws and regulations of multiple state and local  
27 jurisdictions.

28 (3) The [chief tax administrator] or his/her designee shall review all permit applications. The review of  
29 applications shall be conducted in a timely manner so that applicants receive notification of  
30 authorization or denial within [30-120] days of the date the [chief tax administrator] or designee  
31 receives the application; however if additional documentation or discussion is required, the [chief tax  
32 administrator] or designee shall schedule a conference with the applicant prior to the end of the [30-  
33 120]-day period.

34 D. Recordkeeping Requirements. A direct payment permit holder shall maintain all records that are  
35 necessary to a determination of the correct tax liability under [insert appropriate citations to state tax statutes].  
36 All required records must be made available on request by the [taxing authority] or its authorized  
37 representatives as provided for in [insert appropriate citations to state tax statutes].

38 [Insert elements of state law which require certain records to be retained (e.g., books of account, invoices,  
39 sales receipts), or specific tax elements or transactions (e.g., credits) for which particular records may be  
40 required.]

41 E. Reporting of Tax. Each holder of a valid direct payment permit shall, on a form approved by the [taxing  
42 authority], accrue and pay directly to the [taxing authority] the taxes due under [statute] for all transactions  
43 subject to tax for which a direct payment permit applies. Taxes for which the direct payment permit is used  
44 shall be considered due and payable on the sales and use tax return next due following the date on which a

## MODEL DIRECT PAYMENT PERMIT REGULATION

determination of taxability is, or in the exercise of reasonable care should be, made for a given transaction, unless otherwise provided by written agreement between the taxpayer and the [taxing authority].

F. Certain Transactions Not Permitted. A holder of a direct pay permit shall not use such permit in connection with the following transactions:

- (1) purchases of taxable meals or beverages;
- (2) purchases of taxable lodging or services related thereto;
- (3) purchases of admissions to places of amusement, entertainment or athletic events, or the privilege of use of amusement devices;
- (4) purchases of motor vehicles, or other tangible personal property required to be licensed or titled with a taxing authority, taxed under [taxing authority] statutes [list applicable sections];
- (5) purchases of any of the following enumerated services listed in [tax authority] statutes. [List applicable sections. May include services such as telecommunications and utilities.]; and
- (6) Such other purchases as may be agreed to between the holder of the direct payment permit and the [taxing authority].

G. Permit Holder's Duties. The holder of a direct payment permit shall furnish a copy of the direct payment permit or other acceptable evidence, if allowed by statute, that the holder has been granted a direct payment permit, including the number of the permit and the date issued, to each vendor from whom the holder purchases tangible personal property or services. Persons who hold a direct payment permit shall not be required to issue a separate exemption certificate and shall not be required to pay the tax as prescribed in [state taxing statutes related to billing of sales or use tax by vendor].

The holder of a direct payment permit shall have responsibility for accruing and paying tax directly to [taxing authority] on all taxable transactions not taxed at the time of sale. If [taxing authority] and permit holder agree, the holder may maintain accounting records in sufficient detail to show in summary, and in respect to each transaction, the amount of sales or use taxes paid to vendors in each reporting period.

H. Vendor's Responsibilities. Receipt of the direct payment permit or other acceptable evidence that the holder has been granted a direct payment permit, shall relieve the vendor of the responsibility of collecting the sales tax on sales made to a direct payment permit holder on qualifying transactions. Vendors and sellers who make sales upon which the tax is not collected by reason of the provisions of this section shall maintain records in such manner that the amount involved and identity of the purchaser may be ascertained. Receipts from such sales shall not be subject to the tax levied in [state taxing statutes related to billing of sales or use tax by vendor].

I. Local Taxes [if imposed]. A direct pay permit holder that makes taxable purchases of tangible personal property or services shall report and pay applicable local sales or use tax on those purchases. The local sales or use tax shall be calculated at the rate imposed by the jurisdiction in which the first taxable use occurs.

J. Revocation of Permit. A direct payment permit is not transferable, and the use of a direct pay permit may not be assigned to a third party. Direct payment permits may be revoked by the [chief tax administrator] at any time whenever the [chief tax administrator] determines that the person holding the permit has not complied with the provisions of this regulation or that the revocation would be in the best interests of the [taxing authority]. The notice of revocation must be in writing and effective as of the end of the direct payment permit holder's normal reporting period. In the case of a business restructuring, where the taxpayer's business remains the same and effective ownership is unchanged, the direct payment permit holder shall be allowed a period of [60-120 days] to apply for direct payment status for the new entity. During such period, the previous permit shall remain in effect.

Any person whose direct payment permit is either voluntarily forfeited or revoked by action of the [taxing authority] shall return the permit to the [taxing authority] and immediately notify all vendors from whom purchases of taxable items are made advising them that the direct payment certificate issued to them pursuant to the direct payment permit is no longer valid. Failure to give notification is a violation of [statute].